

**പതിനാലാം കേരള നിയമസഭ**  
**ഏഴാം സമ്മേളനം**

നക്ഷത്രചിഹ്നമിടാത്ത ചോദ്യം നമ്പർ- 775

09.08.2017 - ര് മറുപടിക്ക്

**കോവളം ഹാൽസിയന് കൊട്ടാരം**

**ചോദ്യം**

ശ്രീ. അബ്ദുൽ ഹമീദ് പി.

**ഉത്തരം**

ശ്രീ. എ. കെ. ബാലൻ  
(പട്ടികജാതി പട്ടികവർഗ്ഗ പിന്നാക്ക സമുദായ-  
ക്ഷേമവും നിയമവും സാംസ്കാരികവും  
പാർലമെന്ററികാര്യവും വകുപ്പ് മന്ത്രി)

(എ)	കോവളത്തെ ഹാൽസിയന് കൊട്ടാരം ആർ.പി. ഗ്രൂപ്പിന് കൈമാറുന്നത് സംബന്ധിച്ച് നിയമ വകുപ്പ് ബന്ധപ്പെട്ട ഫയലുകളിൽ അഭിപ്രായം രേഖപ്പെടുത്തിയിട്ടുണ്ടോ; ഉണ്ടെങ്കിൽ പ്രസ്തുത നിയമോപദേശങ്ങളുടെ പകർപ്പ് മേശപ്പുറത്ത് വെക്കാമോ;	ടൂറിസം വകുപ്പിന്റെ 3857/ബി1/2006/ടൂറിസം നമ്പർ ഫയലിലും റവന്യൂ വകുപ്പിന്റെ 32621/യു1/2007/ആർ.ഡി. ഫയലിലും അഭിപ്രായം രേഖപ്പെടുത്തിയിട്ടുണ്ട്. പകർപ്പ് ഉള്ളടക്കം ചെയ്യുന്നു.
(ബി)	പ്രസ്തുത നിയമോപദേശത്തിന്റെ അടിസ്ഥാനത്തിൽ മന്ത്രിസഭാ തീരുമാനം ഉണ്ടായിട്ടുണ്ടോ; എങ്കിൽ തീരുമാനമെന്തെന്ന് ഖജപ്പെടുത്താമോ; പകർപ്പ് മേശപ്പുറത്ത് വെക്കാമോ ?	ഉണ്ട്. സർക്കാർ ഉത്തരവ് അനുബന്ധമായി ചേർക്കുന്നു.

ഉത്തരവിൻ പ്രകാരം,



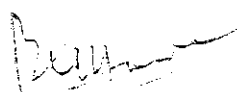
സെക്ഷൻ ഓഫീസർ

No.29/LS/2017/Law  
No.32621/U1/2007/RD

Office of Law Secretary,  
Dated:10/03/2017.

By a common judgment dated 08.04.2005, which is reported in 2005[1] KLT819, the Division Bench of the High Court of Kerala quashed the orders passed by the State of Kerala and directed the State and its Revenue Officials to put the petitioner back in possession of the items of properties taken possession from them, forthwith. Kovalam Palace (Taking Over by Resumption) Act, 2005 passed to overcome the judgment has been held to be void, inoperative and unconstitutional by High Court and the Special Leave Petition before the Hon'ble Supreme Court was dismissed. Learned Attorney General is of the opinion that the State has to comply with the judgments of the Courts. Therefore seeking a second opinion from the Learned Attorney General would be an otiose exercise.

I am of the firm view that the State cannot but comply with the judgment dated 08.04.2005, which is reported in 2005[1] KLT819. It does not behoove Constitutional institutions to flout the judgment of a Court donning the mantle of a cantankerous litigant and invite coercive steps in contempt proceedings. It would be appropriate to deliberate about future course <sup>of action</sup> ~~to be taken~~ in the matter after complying with the judgment dated 08.04.2005.

  
B.G. Harindranath,  
Law Secretary



No.26/LS/2017/Law  
No.3857/B1/06/TSM

Office of the Law Secretary,  
Date: 3/3/2017

### **Facts of the case**

On 25.05.1930, Rev. Alocious Maria Benzigar ODC, Bishop of Kollam transferred an extent of 18.10.00 hectares of land in various Survey Numbers, including an area on 13.55 acres in Sy. No.385/1 situated at Kovalam, to Sri. MakayiramThirunal Rama VarmaValiya Koi Thamburan of Travancore.

The Maharaja of Travancore constructed a place in the aforesaid land known as "Halcyon Castle / Kovalam Palace"

The Department of Tourism, Government of Kerala in the year 1962, acquired an area of 19.13.993 Acres of land including an area of 10.18.993 acres in Sy No.385/1, in which the Halcyon Castle was located. Compensation for acquisition of land was determined as Rs.5, 26,431 /- and paid to MakayiramThirunal Rama VarmaValiya Koi Thamburan. The Department of Tourism, Government of Kerala took over the above property and started running a hotel, viz. 'Kovalam Palace Hotel'.

On the request of the ITDC through the Union of India, the state Government acquired land at Kovalam and agreed to hand over Kovalam Palace and adjoining land for consideration. Pursuant to the sanction granted by the President of India a sum of Rs.9,50,534.30 was paid to the Government of Kerala for the transfer of ownership of the Kovalam Palace property along with the beach at Kovalam measuring about 43 Acres acquired by the State Government.

Government of Kerala, as per G.O. (MS) No. 242/70/PD dated 18.07.1970 accorded sanction for transfer of possession of the Kovalam Palace and the adjacent property, measuring approximately 43 acres acquired for the Kovalam Project to Tourism Department, Government of India with immediate

effect. Possession was ordered to be granted, pending finalization of terms and conditions of transfer. G.O. (MS) No.357/70/PD dated 22.10.1970

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No.26/LS/2017/Law  
No.3857/B1/06/TSM

Office of the Law Secretary,

Date: 4/3/2017

was also issued according sanction for possession of the Beach House and PWD Bathing Shed to the Department of Tourism, Government of India. The Managing Director, Kerala Tourism Development Corporation, on 23.10.1970, handed over 21 Acres 31 cents of Palace property and 22.39 Acres belonging to private parties to the Additional Director General of Tourism, Government of India.

Based on the recommendation of the Disinvestment Commission, Union of India published expression of interest offering to sell nine hotels, which also included Kovalam Ashok Beach Resort (64.50 Acres). M/s M. Far Hotels Ltd, submitted an expression of interest to the Union of India for Rs. 43,68,76,000 /- which was accepted being the Highest offer. Accordingly, the Government of India decided to transfer the ownership and possession to the highest bidder namely M. Far Hotels Ltd.

By order dated 21.05.2002, Government of India granted sanction to a scheme of arrangement by which sanction and approval of demerger scheme was granted transferring the Kovalam Ashok Beach Resort to M Far Hotels Ltd. Accordingly, the hotel property referred to as KABR, (KovalamAshoka Beach Resort), Kovalam was sold by ITDC to first petitioner in Writ Petition by selling the shares by two share purchase agreement. As such M.Far Hotels Ltd, became the owner in possession of 64.05 acres of land including buildings thereon.

The State Government issued Government Order dated 18.04.2004 deciding to take over Kovalam Palace and the land in which it is located. State Government also received a representation dated 06.06.2004 from the granddaughters of Shri. Makayiram Thirunal Rama Varma, requesting the Government to retain the Halcyon Castle Kovalam as a heritage site.

As per G.O. (MS) No.259/04/GAD dated 18.09.04 Government issued order for taking over the Kovalam Palace and the adjoining land.

No.26/LS/2017/Law  
No.3857/B1/06/TSM

Office of the Law Secretary,  
Date: 4/3/2017

State Government issued another order to take over the palace and the land measuring 10.18.99 Acres in Sy. No.385/1 with immediate effect.

Challenging the action, M.Far Hotels Ltd filed W.P. © No. 28270/04 before the Hon'ble High Court of Kerala. Both W.P © No.28270/04 and W.A No. 1796/04 were decided by the Division Bench vide judgment dated 08.04.2005, which was reported in *M Far Hotel Ltd. v. Union of India (2005 (1) KLJ 819)*. The Division Bench held that the action of the State Government in taking over possession was arbitrary and without the authority of law. Government order dated 25.09.04 was set aside, including the notice issued by the District Collector. The State of Kerala and its revenue officers were directed to give back possession to the petitioner. The Special Leave Petitions filed by the State before the Hon'ble Supreme Court against the judgment of the Division Bench as SLP © Nos. 8603 & 8604 of 2005 were dismissed.

The State meanwhile promulgated the Kovalam Palace (Taking Over by Resumption) Ordinance, 2005. The Ordinance was replaced by Kovalam Palace (Taking Over by Resumption) Act, 2005 published in the Kerala Gazette dated 12.08.05. M/s Leelaventure Ltd challenged the constitutionality of the Kovalam Palace (Taking Over by Resumption) Act before the Hon'ble High Court by filing a Writ Petition.

The Union of India in its counter affidavit filed in the Writ Petition pleaded that the property was transferred to the Union of India on payment of full consideration to the Union of India on payment of full consideration and the Government of India and the ITDC were throughout full owners of the property. The Government of India stated that the property was transferred to the sixth respondent, who acquired absolute, clear and marketable title, in the revenue records, including Thandaper Account No.17653, the property was shown to be owned by the ITDC. In the settlement register, prepared after the re-survey, the scheduled property was shown as ITDC property. In furtherance of disinvestment policy, the

*Radhup*

No.26/LS/2017/Law  
No.3857/B1/06/TSM

Office of the Law Secretary,  
Date: 4/3/2017

property was transferred by share purchase agreement by the President of India represented by the Joint Secretary, Ministry of Tourism, Government of India.

The Hon'ble High Court held that the Act was void, inoperative and unconstitutional. The Division bench of Hon'ble High Court in the Writ Appeal filed by the State of Kerala upheld the decisions of Single Bench. Though a Special Leave Petition was filed before the Hon'ble Supreme Court declined to grant leave to file appeal.

In the backdrop of the aforementioned facts, the points arising for consideration are mainly two.

*The first point to be considered whether State of Kerala can institute a suit against the Union of India before Civil Court to declare its title?*

*The second point is whether the possession of the property has to be handed over to the claimants and whether retention of possession would amount to contempt of court?*

#### **Point No 1-:**

Article 131 of the Constitution of India reads thus:

*Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute*

*(a) between the Government of India and one or more States;*

*or*

*(b) between the Government of India and any State or States on one side and one or more other States on the other; or*

*(c) between two or more States, if and in so far as the dispute involves any question (whether of law or fact) on which the*

*existence or extent of a legal right depends: Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagements, and or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute*

Article 131 of the Constitution, deals with the original jurisdiction of the Supreme Court. Subject to the provisions of the Constitution; the Supreme Court has original jurisdiction in any dispute, *inter alia*, between the Government of India and any State or States on one side and one or more other States on the other if and insofar as the dispute involves any question (whether of law or fact) on which the existence of legal right depends. However, by the proviso appended thereto, the jurisdiction of the Supreme Court is barred if the dispute to which a State specified in Part B of the First Schedule is a party if the dispute arises out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument was entered into or executed before the commencement of the Constitution and has or has been continued in operation after such commencement. Evidently, the proviso has no application.

The proposed civil suit is not one disputing the title of an individual but essentially the disputants would be the Union of India on the one side and the Government of a State on the other side inasmuch as M/s Leelaventures Ltd traces title from the Union of India by a transfer pursuant to disinvestment.

Eminent Jurist H.M.SEERVAI said that when a court is given "exclusive jurisdiction" in respect of a 'dispute' between parties, it is reasonable to hold that the court has power to resolve the whole dispute including enforcement of its decrees or orders, especially when provision has been made for such enforcement. *Constitutional Law of India, 4<sup>th</sup> Edn. Vol.III, p.2626.*

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No.26/LS/2017/Law  
No.3857/B1/06/TSM

Office of the Law Secretary,  
Date: 4/3/2017

The purpose of Art.131 is to authorize the Supreme Court to settle inter-governmental disputes. The Article is a necessary concomitant of a federal or a quasi-federal form of government and is attracted when parties to the dispute are the Government of India or one or more States arrayed on either side. (*State of Karnataka v. Union of India*, AIR 1978 SC 68: (1977)4 SCC 608.

Under this Article, the Supreme Court can take cognizance of a dispute involving "any question (whether of law or fact) on which the existence or extent of legal right depends. The dispute must involve assertion or indication of a legal right of the Government of India or a State. It is not necessary that the right must be a constitutional right. All that is necessary is that it must be a legal right. (*State of Rajasthan v. Union of India*, AIR 1977 SC 1361: (1977) 3 SCC 592, per BHAGAVATHI, J.)

The term 'legal right' in this Article is a right of a party recognized and protected by a rule of law, the violation of which would be a legal wrong done to his interest and respect for which is a 'legal' as distinguished from political matters (*D.D.Basusee C6, Vol.A, pp.435ff.*).

Since Article 131 confers exclusive jurisdiction on the Supreme Court with regard to suits between a State on the one side and the Union of India on the other side, a Civil Court would not be competent to entertain such a suit. The opinion approved by the Learned Advocate General seems to be against the provisions in the Constitution of India.

As per letter No.7TPL.II (7)/66 on 26<sup>th</sup> of March 1970, Government of India wrote to the Government of Kerala regarding acquisition of the Palace Property and land along the beach Kovalam comprising of the Halyon Castle (Kovalam Palace). By this letter, the Government of India intimated the sanction of the President regarding payment of a sum of Rs 9.50.534.39 to the Government of Kerala on account of the transfer of the Palace Property. It was also stated in the letter that the above amount



No.26/LS/2017/Law  
No.3857/B1/06/TSM

Office of the Law Secretary,  
Date: 04/03/2017

represented the expenditure incurred by the State Government on the above items and other related works in connection with the Kovalam Project. A request was made for taking necessary steps for the transfer of the ownership of the property mentioned above to the Department of Tourism, Government of India.

In pursuance of this letter, as per G.O (MS) No.242/70/PD dated 18<sup>th</sup> July 1970, Government of Kerala accorded sanction for the possession of the Kovalam Palace and the adjacent property, measuring 43 acres, acquired for the Kovalam Project. It was stated in the G.O that the property was being handed over to the Department of Tourism, Government of India, with immediate effect pending finalization of the terms and conditions of transfer.

The revenue records and all other contemporary records maintained by the State Government, the local authorities and statutory authorities for the period from 1970 to 1972 records M/s ITDC as the owner and possessor of the entire 25.78.40 Hectares (64.05 acres) including Kovalam Palace. Settlement Register was prepared based on re-survey which started in 1971 and completed in 1994. The settlement Register records 25.78.40 Hectares as ITDC property. Basic Tax Register in Form No F which records each item of 54.5 acres land as 'owned by the ITDC and land tax paid was by the ITDC from 1970 onwards. Thandaper Account No.17653 records the registered owner as "General Manager, ITDC" in respect of the entire 64.5 acres of land. Proceedings of the District Collector, Thiruvananthapuram dated 23.05.2000 is an application dated 17.05.2000 for possession certificate submitted by the General Manager, ITDC. Possession Certificate No.R.Dic.10806/2002/G4 dated 16.04.2002 issued to the Manager, ITDC Kovalam who is in possession of 25.78.40 Hectares. The local Panchayat Property tax register from 1983 shows Kovalam Palace as ITDC property and the tax was being paid ITDC. The Tahsildar, Neyyattinkara had assessed the ITDC under the Kerala Building Tax Act in respect of the Buildings owned by the ITDC. The Village Officer,

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No.26/LS/2017/Law  
No.3857/B1/06/TSM

Office of the Law Secretary,  
Date: 04/03/2017

Vizhinjam in his report dated 13.03.2000 reported that as per the Resurvey records, the ownership of 25.78.40 Hectares has been recorded by the Survey Department in the name of ITDC.

For 35 years, the Government of India through ITDC Hotels was in possession of these lands, including the Palace land. There was a mutual agreement between the Central Government and the State Government, which is adequately reflected in the correspondence. The entire cost of this acquisition was borne by the Government of India through transfers made from the Union to the State from time to time. Possession of these properties has been transferred by the State to the Union and in this fashion for almost 35 years; ITDC Hotel was in possession of these properties.

The Hon'ble Court observed that it was neither pleaded nor was it the case of the State that consideration of Rs.9,58,954 /- as sanctioned by the Government of India vide letter dated 26.03.1970 was not paid to the State of Kerala.

Section 17 (2) (vii) of the Registration Act exempts any grant of immovable property by the Government, from registration. It was held in **K.V. Shivakumar and Ors** (MANU/KA/1879/2016), that a Government Order by the Government by way of an allotment, did not require registration under Section 17(1) of the Act. Section 90 of the Registration Act provides for exemption of certain documents executed by or in favour of the Government. As per Section 90 (1)(d) Sanads, inam title-deeds and other documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land are exempted. Unlike in the case of transfer of property among ordinary individuals no sale deed or registration is required when the transfer is between State Government of the one part and the Union of India of the other part.

No.26/LS/2017/Law  
No.3857/B1/06/TSM

Office of the Law Secretary,  
Date: 4/3/2017

A grant by a Government may be in the form of a letter to the individual concerned. The Government Order mentioned above and subsequent changes made in the records showing ownership is sufficient to posit an inference that the ownership over the property was transferred.

The nature of possession of the ITDC is also relevant consideration in this matter. It is mentioned in the certificate issued by the Additional Tahsildar (G4 10806/2002 dated 18.04.2002) that besides the property handed over, more extent of land is in the adverse possession of ITDC Kovalam. The order of the Joint Secretary, Government of India, Ministry of law and justice and company affairs dated 31.05.2002 shows that all the properties of ITDC stood transferred to M/s. Kovalam Hotel Pvt. Ltd. Proceedings of the District Collector K4 30636/2000 dated 23.05.2000 indicated that about 28 years prior to 23.05.2000, property having an extent of 25 Hectares 78 Ares was transferred to ITDC Kovalam. On 27.03.2003 a meeting was held between the Secretary Tourism Department and the KTDC M.D. The following decisions were taken in the meeting.

1. Government of Kerala would transfer the Halcyon Palace and surrounding area in Sy.No.7/1 in an extent of 4.21 hectares to M/s Kovalam Hotels Ltd., Thiruvananthapuram, which is in their adverse possession.
2. Out of the total area of Kovalam Hotels Pvt. Ltd., Thiruvananthapuram, land measuring an extent of 2.3591 hectare in Sy. No.7/1 and an extent of 1.90 hectares in Sy.No.18/1 would be transferred to Kerala Tourism Development Corporation and State Government respectively as quid-pro-quo.
3. There is a common access used by the State Government and M/s Kovalam Hotels Ltd. for entry and exit to the hotel and Government Guest House. Any change, alteration or modification with regard to the access will be done by mutual consent.



No.26/LS/2017/Law  
No.3857/B1/06/TSM

Office of the Law Secretary,  
Date: 04/03/2017

The minutes indicate that the Halcyon Palace and surrounding area was is in the adverse possession of ITDC. Under Article 64 r/w Article 112 of the Limitation Act, the period for filing a suit to recover possession of an immovable property is 30 years from the date when the possession became adverse. The minutes and other documents indicate that State of Kerala has admitted the adverse possession of M/s ITDC Hotel began more than 30 years ago. Therefore the proposed suit would be barred by the limitation. Under Section 27 of the Limitation Act, at the determination of the period limited for instituting a suit for recovery of possession of a property the right over such property would stand extinguished. The Section indicates that there would be a divestiture of title of the real owner and investiture of such title in the person in possession.

Therefore even if the State of Kerala had title over the property it would have been extinguished by adverse possession and limitation.

Therefore, it would be a colossal error to embark on a speculative litigation with a doubtful claim of title against the Union of India, a necessary party to the suit, and the petitioner in the WPC.

**Point No 2:-**

By a common judgment dated 08.04.2005, which is reported in 2005[1] KLT819, the Division Bench passed the following order:-

*"The Government Order, Exhibit P13, dated 25.09.2004 therefore cannot stand in the eye of law, so also the notice issued by the District Collector pursuant to the Government Order. Those orders are accordingly quashed and there will be a direction to the State of Kerala and its Revenue Officials to put the petitioner back in possession of the items of properties taken possession from them, forthwith. Writ appeal*

No.26/LS/2017/Law  
No.3857/B1/06/TSM

Office of the Law Secretary,  
Date: 4/3/2017

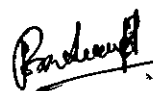
*and Writ Petition are accordingly allowed with cost of Rs.10,000/- to be paid to the 1<sup>st</sup> petitioner by the State Government."*

There is a clear direction in the aforementioned judgment to hand over the property. To get over that judgment, the State of Kerala passed Kovalam Palace (Taking Over by Resumption) Act, 2005. This Act has been held to be void, inoperative and unconstitutional by High Court and the Special Leave Petition before the Hon'ble Supreme Court was dismissed. The resultant position is that the direction in the judgment reported in 2005[1] KLT 819, is still in force and the State has to comply with that judgment. Failing which contempt proceedings could be initiated against the State.

State and its instrumentalities have to first comply with judgments of Courts and act in fairness. By an arbitrary action followed by an unconstitutional Act, the State took over possession. Once the actions of the Government and its instrumentalities have been held to be void, inoperative and unconstitutional by Hon'ble High Court, the State ought not to cling on to such illegal possession. In fairness, the state has to return the property to the person from whom possession was taken complying with the direction in the judgment cited supra.

If found necessary, it would be advisable to get the opinion of the learned Attorney General of India since the Advocate General's opinion in my humble view requires a relook.

  
B.G. Harindranath,  
Law Secretary.





**കേരള സർക്കാർ**

സംഗ്രഹം

വിനോദസഞ്ചാര വകുപ്പ് - ബഹു.സുപ്രീം കോടതിയുടെ അപ്പീലിനുള്ള സ്പെഷ്യൽ ലീവ് ഹർജി (c) No.2852/2015 -യിലെ വിധിയനുസരിച്ച് ബഹു.ഹൈക്കോടതി റിട്ട് അപ്പീൽ 250/2011-ൽ 8/12/2014-ൽ പുറപ്പെടുവിച്ച വിധി ന്യായത്തിലെ കോടതി നിർദ്ദേശം നടപ്പിലാക്കി - ഉത്തരവ് പുറപ്പെടുവിക്കുന്നു.

**വിനോദസഞ്ചാര (ബി) വകുപ്പ്**

സ.ഉ.(കൈ)നം.17/2017/ടൂറിസം.

തീയതി, തിരുവനന്തപുരം, 01/08/2017.

പരാമർശം: -

- 1 സർക്കാർ ഉത്തരവ് (എം.എസ്) നം.259/2004/പൊഭവ; തീയതി 18/09/2004.
- 2 സർക്കാർ ഉത്തരവ് (പി)നം.302/2004/റവന്യൂ; തീയതി 25/09/2004.
- 3 M/s M.Far ഹോട്ടൽസ് ലിമിറ്റഡും M/s കോവളം ഹോട്ടൽസ് ലിമിറ്റഡും ചേർന്ന് ഫയൽ ചെയ്ത റിട്ട് പെറ്റീഷൻ 28270/2004, റിട്ട് അപ്പീൽ 1796/2004 എന്നിവയിന്മേൽ ബഹു.കേരളഹൈക്കോടതിയുടെ 08/04/2005 ലെ പൊതു വിധിന്യായം.
- 4 M/s Kovalam Hotels Ltd മുതൽപേർ ബഹു.കേരള ഹൈക്കോടതി മുമ്പാകെ ഫയൽ ചെയ്ത റിട്ട് പെറ്റീഷൻ (സി) 31820/2005 -ലെ 07/01/2011 വിധിന്യായം.
- 5 റിട്ട് അപ്പീൽ 250/11 -ന്മേൽ ബഹു.കേരള ഹൈക്കോടതി 08/12/2014-ൽ പുറപ്പെടുവിച്ച വിധിന്യായം.
- 6 സ്പെഷ്യൽ ലീവ് ഹർജി നം.12852/2015-ന്മേൽ ബഹു.സുപ്രീം കോടതിയുടെ 08/03/2016-ലെ ഉത്തരവ്.
- 7 ഡോ.ബി.രവി പിള്ള ബഹു.കേരള ഹൈക്കോടതി മുമ്പാകെ സർക്കാരിനെതിരെ ഫയൽ ചെയ്ത 353/2017-ാം നമ്പർ കോടതിയലക്ഷ്യ കേസ്.

**ഉത്തരവ്**

നെയ്യാറ്റിൻകര താലൂക്കിൽ വിഴിഞ്ഞം വില്ലേജിൽ സർവ്വേ നം.7/1-ൽ ഉൾപ്പെട്ട കോവളം കൊട്ടാരവും അതിനോട് ചേർന്ന 4.13.30 ഹെക്ടർ ഭൂമിയും Kovalam Palace (Taking Over by Resumption) Act,2005 പ്രകാരം സർക്കാർ ഏറ്റെടുത്ത നടപടിക്കെതിരെയുള്ള പരാമർശം 5-ലെ ബഹു. ഹൈക്കോടതിയുടെ വിധി നടപ്പാക്കുന്ന വിഷയം സർക്കാർ ചുവടെപ്പറയും പ്രകാരം വിശദമായി പരിശോധിച്ചു

2) 1962 ൽ കോവളം കൊട്ടാരം/ഹാൽസുൺ കാമ്പിൽ ഉൾപ്പെട്ട സർവ്വേ നമ്പർ 385/1 ൽപ്പെട്ട 10.18993 ഏക്കർ വസ്തു ഉൾപ്പെടെയുള്ള 19.13.782 ഏക്കർ ഭൂമി വിനോദ സഞ്ചാര വകുപ്പ് വസ്തുവിന്റെ മൂന്നവകാശിയായ ശ്രീ.മകയിരം തിരുനാൾ രാമവർമ്മ വലിയ കോയിത്തമ്പുരാന് നഷ്ടപരിഹാരം നൽകി ഏറ്റെടുത്തിരുന്നു. തുടർന്ന് 18/07/1970 ൽ ഈ ഭൂമി ഉൾപ്പെടെ 43 ഏക്കർ ഭൂമി

*Handwritten signature*

ഭാരത സർക്കാരിനു കീഴിലുള്ള വിനോദ സഞ്ചാരവകുപ്പിനു കോവളം പ്രോജക്ട് നടപ്പാക്കുന്നതിനായി കൈമാറി. 2002 ൽ കേന്ദ്ര സർക്കാർ ഐ.ടി.ഡി.സിയുടെ കോവളം അശോകാ ബീച്ച് റിസോർട്ട് ഉൾപ്പെടെ 9 ഹോട്ടലുകൾ വിറ്റഴിക്കുന്നതിനായി താൽപ്പര്യപത്രം പുറപ്പെടുവിക്കുകയും തുടർന്ന് കോവളം കൊട്ടാരമുൾപ്പെടുന്ന മേൽ പ്രസ്താവിത ഭൂമി M/s കോവളം ഹോട്ടൽസ് (പ്രൈവറ്റ് ലിമിറ്റഡ്) & M/s.എം.ഫാർ ഹോട്ടൽസിനു വിറ്റഴിക്കുകയും ചെയ്തു. പിന്നീട്, കോവളം കൊട്ടാരവും അനുബന്ധ ഭൂമിയും ഒരു പൈതൃകസ്മാരകമായി നിലനിർത്തണമെന്ന് കണ്ടെത്തിയതിനെ തുടർന്ന് മേൽപ്പറഞ്ഞ ഭൂമി സർക്കാർ ഏറ്റെടുക്കാൻ തീരുമാനിച്ചു.

3) ഇതിനെ തുടർന്ന് പരാമർശം 1,2 എന്നീ ഉത്തരവുകൾ പ്രകാരം നെയ്യാറ്റിൻകര താലൂക്കിൽ വിഴിഞ്ഞം വില്ലേജിൽ സർവ്വേ നം.7/1 ൽ ഉൾപ്പെട്ട കോവളം കൊട്ടാരം/ഹാൽസ്യൻ കാസിൽ ൊ അതിനോടു ചേർന്ന 4.13.30 ഹെക്ടർ അനുബന്ധ ഭൂമിയും സർക്കാർ ഏറ്റെടുത്തു. ഇതിനെതിരെ M/s M.Far ഹോട്ടൽസ് ലിമിറ്റഡും M/s കോവളം ഹോട്ടൽസ് ലിമിറ്റഡും ചേർന്ന് ഫയൽ ചെയ്ത റിട്ട് പെറ്റീഷൻ 28270/2004, റിട്ട് അപ്പീൽ 1796/2004 എന്നിവയിന്മേൽ ബഹു.കേരള ഹൈക്കോടതി പുറപ്പെടുവിച്ച പരാമർശം 3 ഉത്തരവ് പ്രകാരം പരാമർശം 1,2 എന്നീ ഉത്തരവുകൾ റദ്ദ് ചെയ്യപ്പെട്ടു. തുടർന്ന് കേരള സർക്കാർ Kovalam Palace (Taking Over by Resumption) Act, 2005 എന്ന നിയമം പാസ്സാക്കുകയും 12/08/2005 ലെ സർക്കാർ ഗസറ്റിൽ പ്രസിദ്ധീകരിക്കുകയും ചെയ്തു. പ്രസ്തുത നിയമത്തിന്റെ ഭരണഘടനാ സാധുത ചോദ്യം ചെയ്ത കൊണ്ട് M/s Kovalam Hotels Ltd മുതൽപേർ റിട്ട് പെറ്റീഷൻ (സി) 31820/2005 ബഹു.കേരളാ ഹൈക്കോടതിയിൽ ഫയൽ ചെയ്തു. ബഹു.ഹൈക്കോടതിയുടെ പരാമർശം 4 വിധി പ്രകാരം ടി റിട്ട് പെറ്റീഷൻ അനുവദിക്കുകയും Kovalam Palace (Taking Over by Resumption) Act, 2005 ഭരണ ഘടനാവിരുദ്ധമാണെന്ന് വിധിക്കുകയും ചെയ്തു. ഇതിനെതിരെ സംസ്ഥാന സർക്കാർ റിട്ട് അപ്പീൽ 250/2011 നമ്പരായി ഫയൽ ചെയ്തു. എന്നാൽ പരാമർശം 5 വിധിന്യായത്തിൽ ബഹുമാനപ്പെട്ട ഹൈക്കോടതി Kovalam Palace (Taking Over by Resumption) Act, 2005 ഭരണ ഘടനാവിരുദ്ധവും ആയതുകൊണ്ടു തന്നെ നിലനിൽപ്പില്ലാത്തതും നടപ്പാക്കാൻ കഴിയാത്തതുമാണെന്ന് ഒരിക്കൽ കൂടി പ്രസ്താവിച്ചു കൊണ്ട് സർക്കാർ സമർപ്പിച്ച റിട്ട് അപ്പീൽ തള്ളുകയും, ഈ വിധിന്യായം ചോദ്യം ചെയ്ത കൊണ്ട് സർക്കാർ ബഹുമാനപ്പെട്ട സുപ്രീം കോടതിയിൽ അപ്പീലിനായി സമർപ്പിച്ച സ്പെഷ്യൽ ലീവ് ഹർജി ബഹുമാനപ്പെട്ട സുപ്രീം കോടതി പരാമർശം 6 പ്രകാരം തള്ളുകയുമാണുണ്ടായത്.

4) മേൽ വിധിന്യായത്തിനെതിരെ അപ്പീലോ റിവീഷൻ പെറ്റീഷനോ ബഹു.സുപ്രീം കോടതിയിൽ ഫയൽ ചെയ്യുന്നതിനുള്ള സാധ്യത സർക്കാർ വിശദമായി പരിശോധിക്കുകയും അതിനുള്ള സാധ്യത ഇല്ലെന്ന് കാണുകയും ചെയ്തു. എന്നാൽ തർക്ക ഭൂമിയിൽ അവകാശം ഉന്നയിക്കാൻ അധികാരപ്പെട്ട കോടതിയിൽ സിവിൽ സ്യൂട്ട് ഫയൽ ചെയ്യുന്നതിനുള്ള സംസ്ഥാന സർക്കാരിന്റെ അവകാശം നിലനിർത്താൻ തീരുമാനിക്കുകയും ചെയ്തു.

5) മേൽപ്പരാമർശിച്ച വസ്തുതകളുടെ അടിസ്ഥാനത്തിലും സർക്കാർ ഈ വിഷയം വിശദമായി പരിശോധിച്ചതിന്റെ അടിസ്ഥാനത്തിലും, സർക്കാർ ഇക്കാര്യം പുന:പരിശോധിക്കുവാൻ തീരുമാനിക്കുന്ന പക്ഷം, അവകാശം ഉന്നയിക്കാൻ അധികാരപ്പെട്ട കോടതിയിൽ സിവിൽ സ്യൂട്ട് ഫയൽ ചെയ്യുന്നതിനുള്ള സംസ്ഥാന സർക്കാരിന്റെ അവകാശം നിലനിർത്തിക്കൊണ്ട്, കോവളം കൊട്ടാരം/ഹാൽസ്യൻ കാസിൽ അതുൾപ്പെടുന്ന വിനോദസഞ്ചാരവകുപ്പിന്റെ 4.13.30 ഹെക്ടർ ഭൂമിയുടെ കൈവശാവകാശം ആർ.പി.ഗുപ്തന് കൈമാറി ഉത്തരവാകുന്നു. ബന്ധപ്പെട്ട തഹസീൽദാർ ഉത്തരവനുസരിച്ച് നിയമാനുസരണം കൈവശം ആർ.പി.ഗുപ്തന് കൈമാറേണ്ടതാണ്.

6) പരാമർശം 4 മുതൽ 6 വരെയുള്ള കോടതി ഉത്തരവുകൾ ഇപ്രകാരം നടപ്പാക്കി ഉത്തരവാകുന്നു.  
( ഗവർണ്ണറുടെ ഉത്തരവിൻ പ്രകാരം )  
ഡോ.വേണു.വി  
പ്രിൻസിപ്പൽ സെക്രട്ടറി.

ഡോ.ബി.രവി പിള്ള, ഡയറക്ടർ, കോവളം റിസോർട്ട്സ് പ്രൈവറ്റ് ലിമിറ്റഡ്, ടി ലീല കോവളം,  
കോവളം ബീച്ച്, കോവളം, തിരുവനന്തപുരം-695527.  
അഡ്വക്കേറ്റ് ജനറൽ, കേരള, എറണാകുളം (ആമുഖ കത്ത് സഹിതം).  
ഡയറക്ടർ, ടൂറിസം, പാർക്ക് വ്യൂ, തിരുവനന്തപുരം.  
ജില്ലാ കളക്ടർ, തിരുവനന്തപുരം.  
ബന്ധപ്പെട്ട തഹസീൽദാർക്ക് (ജില്ലാ കളക്ടർ, തിരുവനന്തപുരം മുഖേന).  
പൊതു ഭരണ ( എസ്.സി) വകുപ്പ് ( 27/07/2017-ലെ ഇനം നം.1260 പ്രകാരം )  
റവന്യൂ (യു) വകുപ്പ്. (ഫയൽ നം 3262/യു 1/2007/റവന്യൂ പ്രകാരം )  
നിയമ വകുപ്പ് (കുറിപ്പ് നം 9759/സ്യൂട്ട് 111/2016/നിയമം പ്രകാരം )  
വിവര, പൊതു ജന സമ്പർക്ക വകുപ്പിന് (സർക്കാർ വെബ് സൈറ്റിൽ പ്രസിദ്ധീകരിക്കുന്നതിന്)  
കരുതൽ ഫയൽ/ഓഫീസ് കോപ്പി.

ഉത്തരവിൻ പ്രകാരം

സെക്ഷൻ ഓഫീസർ.

